



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0213]**

**RIN 1625-AA87**

**Security Zone; Burke Lakefront Airport, Lake Erie, Cleveland, OH**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a security zone for navigable waters of Lake Erie, Cleveland, OH. This security zone is necessary to protect the public and surrounding waterways from terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0213 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Sean Dolan, 716-843-9322, email D09-SMB-SECBuffalo-WWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

Previously COTP Buffalo has had to implement emergent security zones around Burke Lakefront Airport, Cleveland, OH whenever Senior Government Officials or foreign dignitaries utilized the airport for travel into and out of Cleveland, OH. The COTP Buffalo has determined that a security zone is necessary to protect certain individuals, vessels, the public, and surrounding waterways from terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature.

The purpose of this rulemaking is to ensure the safety of vessels, the public, and the navigable waters within the security zone before, during, and after the arrival and departure of certain individuals when notified. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a security zone that will be enforced only upon notice of the COTP Buffalo. The COTP Buffalo will cause notice of enforcement of the security zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The COTP Buffalo will issue a Broadcast Notice to Mariners notifying the public when enforcement of the security zone is established by this section is suspended. The security zone will encompass all waters in Lake Erie within a line connecting the following geographical positions: 41°31'45"N, 081°39'20"W; then extending Northwest to 41°32'23"N, 081°39'46"W; then extending Southwest to 41°31'02"N, 081°42'10"W; then extending Southwest to the shoreline at 41°30'38"N, 081°41'53"W; then following the shoreline back to the point of origin..

The security zone is necessary to protect Senior Government Officials or foreign dignitaries. No vessel or person would be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. The Captain of the Port or his or her designated representative may be contacted via VHF Channel 16 or at 716-843-9525. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a

number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the need to protect individuals, personnel, vessels, the public, and surrounding waterways from terrorist acts, sabotage, or other subversive acts, accidents or other causes of a similar nature. We conclude that this rule will have a minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The security zone created by this rule will be relatively small, effective only during the time necessary to protect individuals, personnel, vessels, the public, and surrounding waterways, and is designed to minimize its impact on navigable waters. Furthermore, the security zone has been designed to allow vessels to transit around it. Thus restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the security zone when permitted by the Captain of the Port.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a security zone that encompasses all waters in Lake Erie within a line connecting the following geographical positions: 41°31'45"N, 081°39'20"W; then extending Northwest to 41°32'23"N, 081°39'46"W; then extending Southwest to 41°31'02"N, 081°42'10"W; then extending Southwest to the shoreline at 41°30'38"N, 081°41'53"W; then following the shoreline back to the point of origin.. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be



viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### **PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** Authority: 46 U.S.C. 70034, 70051; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.913 to read as follows:

#### **§ 165.913 Security Zone; Burke Lakefront Airport, Lake Erie, Cleveland, OH.**

(a) *Location.* Burke Lakefront Airport. This security zone includes all waters extending from the surface to the sea floor within approximately 200 yards seaward from the shoreline of the Burke Lakefront Airport and encompasses all waters in Lake Erie within a line connecting the following geographical positions: 41°31'45"N, 081°39'20"W; then extending Northwest to 41°32'23"N, 081°39'46"W; then extending Southwest to 41°31'02"N, 081°42'10"W; then extending Southwest to the shoreline at 41°30'38"N, 081°41'53"W; then following the shoreline back to the point of origin.

(b) *Definitions.* (1) Designated representative means any Coast Guard commissioned, warrant, or petty officers designated by the Captain of the Port Buffalo to monitor a security zone, permit entry into a security zone, give legally enforceable orders to persons or vessels within a security zone, and take other actions authorized by the Captain of the Port Buffalo.

(2) Public vessel means a vessel that is owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Buffalo or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port Buffalo or a designated representative to enter, move within or exit the security zone established in this section when the security zone is enforced. Vessels and persons granted permission to enter the security zone shall obey all lawful orders or directions of the Captain of the Port Buffalo or a designated representative. While within the security zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Notice of Enforcement or Suspension of Enforcement.* The security zone established by this section will be enforced only upon notice of the Captain of the Port Buffalo. The Captain of the Port Buffalo will cause notice of enforcement of the security

zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with §165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Buffalo will issue a Broadcast Notice to Mariners notifying the public when enforcement of the security zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Buffalo or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: April 24, 2019

KENNETH E. BLAIR,  
Commander, U.S. Coast Guard,  
Acting Captain of the Port Buffalo.

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